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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF OREGON

10 ROBIN BRENT MULL,

Civil No. 08-720-AA
OPINION AND ORDER

11 Plaintiff,

12 vs.

13 MICHAEL J. ASTRUE,
Commissioner of Social Security,

14 Defendant.

15 _____
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AIKEN, Judge:

Claimant, Robin Mull, brings this action pursuant to the
Social Security Act (the Act), 42 U.S.C. §§ 405(g) and

1 1383(c)(3), to obtain judicial review of a final decision of the
2 Commissioner denying his application for disability insurance
3 benefits under Title II of the Act. For the reasons set forth
4 below, the Commissioner's decision is affirmed and this case is
5 dismissed.

6 **PROCEDURAL BACKGROUND**

7 Plaintiff filed an application for disability insurance
8 benefits on August 27, 2004. Tr. 11. This application was
9 denied initially and upon reconsideration. Plaintiff then
10 requested a hearing before an Administrative Law Judge (ALJ).
11 After a hearing, on January 16, 2008, the ALJ issued a decision
12 finding plaintiff not disabled. Tr. 8-15. The Appeals Council
13 declined to grant plaintiff's timely request for review. Tr. 3-
14 5. This action resulted in the ALJ's January 16, 2008, decision
15 becoming the final order of the Agency.

16 **STATEMENT OF THE FACTS**

17 Born February 19, 1960, plaintiff alleges disability
18 beginning December 1998. Tr. 49, 78. Plaintiff alleges
19 disability based on a combination of impairments, including the
20 following: anxiety, panic attacks, neck pain, back pain, left
21 knee pain, degenerative disc disease, arthritis, dyslexia,
22 obesity as indicated by a Body Mass index of 35.4 (height of 5'9"
23 and weight 240 pounds), herniated neck disc, and dislocated left
24 knee. Tr. 38, 75, 81.

25 **STANDARD OF REVIEW**

26 This court must affirm the Secretary's decision if it is
27 based on proper legal standards and the findings are supported by
28 substantial evidence in the record. Hammock v. Bowen, 879 F.2d

1 498, 501 (9th Cir. 1989). Substantial evidence is "more than a
2 mere scintilla. It means such relevant evidence as a reasonable
3 mind might accept as adequate to support a conclusion."
4 Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting
5 Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 229 (1938)).
6 The court must weigh "both the evidence that supports and
7 detracts from the Secretary's conclusions." Martinez v. Heckler,
8 807 F.2d 771, 772 (9th Cir. 1986).

9 The initial burden of proof rests upon the claimant to
10 establish disability. Howard v. Heckler, 782 F.2d 1484, 1486
11 (9th Cir. 1986). To meet this burden, plaintiff must demonstrate
12 an "inability to engage in any substantial gainful activity by
13 reason of any medically determinable physical or mental
14 impairment which can be expected . . . to last for a continuous
15 period of not less than 12 months. . . ." 42 U.S.C.
16 § 423(d)(1)(A).

17 The Secretary has established a five-step sequential
18 process for determining whether a person is disabled. Bowen v.
19 Yuckert, 482 U.S. 137, 140 (1987); 20 C.F.R. §§ 404.1502,
20 416.920. First the Secretary determines whether a claimant is
21 engaged in "substantial gainful activity." If so, the claimant
22 is not disabled. Yuckert, 482 U.S. at 140; 20 C.F.R.
23 §§ 404.1520(b), 416.920(b).

24 In step two the Secretary determines whether the claimant
25 has a "medically severe impairment or combination of
26 impairments." Yuckert, 482 U.S. at 140-41; see 20 C.F.R.
27 §§ 404.1520(c), 416.920(c). If not, the claimant is not
28 disabled.

1 In step three the Secretary determines whether the
2 impairment meets or equals "one of a number of listed impairments
3 that the Secretary acknowledges are so severe as to preclude
4 substantial gainful activity." Id.; see 20 C.F.R.
5 §§ 404.1520(d), 416.920(d). If so, the claimant is conclusively
6 presumed disabled; if not, the Secretary proceeds to step four.
7 Yuckert, 482 U.S. at 141.

8 In step four the Secretary determines whether the claimant
9 can still perform "past relevant work." 20 C.F.R.
10 §§ 404.1520(e), 416.920(e). If the claimant can work, she is not
11 disabled. If she cannot perform past relevant work, the burden
12 shifts to the Secretary. In step five, the Secretary must
13 establish that the claimant can perform other work. Yuckert, 482
14 U.S. at 141-42; see 20 C.F.R. §§ 404.1520(e) & (f), 416.920(e) &
15 (f). If the Secretary meets this burden and proves that the
16 claimant is able to perform other work which exists in the
17 national economy, she is not disabled. 20 C.F.R. §§ 404.1566,
18 416.966.

19 DISCUSSION

20 1. The ALJ's Findings

21 _____The ALJ applied the sequential evaluation process outlined
22 above to determine that plaintiff had engaged in substantial
23 gainful activity since the alleged onset date, having performed
24 work activity for pay from 2004 through 2006 with earnings that
25 exceeded substantial gainful activity levels. Tr. 13. Regarding
26 plaintiff's alleged onset date of December 30, 1998, through
27 2004, the ALJ found that plaintiff had the following impairments:
28 degenerative disc disease and an anxiety disorder, but found that

1 these impairments were not "severe" pursuant to the regulations.
2 Tr. 13. Therefore, the ALJ found plaintiff not disabled. Tr.
3 15.

4 2. Plaintiff's Allegation of Error

5 Plaintiff argues that he had one or more "severe"
6 impairments from 1998 to 2004, and that the ALJ violated an
7 alleged duty to recontact medical sources that would support
8 plaintiff's claim.

9 "An impairment or combination of impairments can be found
10 'not severe' only if the evidence establishes a slight
11 abnormality that has 'no more than a minimal effect on an
12 individual's ability to work.'" Smolen v. Chater, 80 F.3d 1273,
13 1290 (9th Cir. 1996) (internal citations omitted). Further, "an
14 impairment(s) is considered 'not severe' if it is a slight
15 abnormality(ies) that causes no more than minimal limitation in
16 the individual's ability to function independently,
17 appropriately, and effectively in an age-appropriate manner."
18 SSR 96-3p (1996 WL 374181).

19 I find that plaintiff failed to carry his burden of proof
20 at step two of the sequential evaluation process. I find no
21 evidence in the record that plaintiff's impairments would have
22 had more than a minimal effect on his mental or physical ability
23 to perform basic work activities. As noted by the ALJ,
24 plaintiff's medical records show only mild symptoms, and the
25 objective evidence of record shows clinical findings that were
26 either negative, or mild. Significantly, the record shows that
27 plaintiff's symptoms were well controlled with treatment. Tr.
28 14. Plaintiff was, at one time, limited to sedentary work as he

1 recovered from surgery; however, post-surgery, plaintiff's EMG
2 studies were normal, and treating physician William Smith, M.D.,
3 anticipated "no severe or ongoing disability once healed." Tr.
4 109. Significantly, the ALJ requested that plaintiff provide
5 further evidence of his impairments when plaintiff requested
6 reconsideration of the initial denial of his application.
7 Plaintiff declined to do so. Tr. 39. The following statement is
8 significant in that it accurately portrays the state of the
9 record: "[o]verall there is insufficient evidence both physically
10 and mentally for this closed period to determine the severity of
11 his allegations as the last dated records are in 2002. There are
12 no records to cover from 2002-2004 at which time [claimant]
13 returned to work as a handiman (sic) at a farm." Tr. 104.
14 Finally, the psychologist who reviewed plaintiff's record
15 concluded repeatedly that there was "insufficient evidence to
16 substantiate the presence of the disorder." Tr. 89-102.
17 Therefore, the ALJ properly decided plaintiff's case based upon
18 the medical evidence of record and the fact of plaintiff's
19 subsequent return to vigorous substantial gainful activity at
20 construction and agricultural jobs. Tr. 13.

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1 **CONCLUSION**

2 The Commissioner's decision is based on substantial
3 evidence, and is therefore, affirmed. This case is dismissed.
4 IT IS SO ORDERED.

5 Dated this 10 day of June 2009.

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8
9 /s/ Ann Aiken

10 Ann Aiken
11 United States District Judge
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